

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC**

| | | |
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| In the Matter of |) | |
| |) | |
| PAGING COALITION |) | CC Docket No. 01-346 |
| |) | |
| Request for Declaratory Ruling that |) | |
| Termination by Verizon of Type 3A |) | |
| Interconnection Service Would Be Unjust |) | |
| and Unreasonable, in Violation of Section 201 |) | |
| of the Communications Act, 47 U.S.C. §201, |) | |
| and Otherwise Unlawful |) | |
| | | |
| To: The Commission, <i>en banc</i> | | |

**REPLY TO COMMENTS ON
PETITION FOR DECLARATORY RULING**

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February 4, 2002

SUMMARY OF REPLY TO COMMENTS

1. Verizon is simply wrong when it pretends that termination of Type 3A interconnection will not cause Coalition members to reconfigure their networks at great disruption and financial cost to themselves and their customers. Verizon itself estimates for other purposes that *80 percent* of the Type 3A calls would become toll calls when Type 3A is eliminated. Such a drastic change would be *absolute budget busters* for the police and fire departments, other emergency or public safety personnel throughout New England, Pennsylvania, Kentucky and West Virginia, as well as doctors, major hospitals and other critical medical services throughout these areas which comprise the major portion of the Coalition's affected customers. Therefore, as a customer service imperative, Coalition members would be forced to reconfigure their networks to provide local calling access in as many of Verizon's local exchanges as is economically feasible to do. Such an exercise without question would be onerous, costly and disruptive for both Coalition members and their customers; and ultimately would result in degraded service.

2. In attempting to defend its elimination of Type 3A interconnection, Verizon continues to ignore the crucial fact that paging carriers are entirely exempt from wireless LNP obligations. Other ILECs tacitly acknowledge the difference by continuing to offer Type 3A and similar arrangements to paging carriers notwithstanding the advent of wireless LNP. Moreover, Southwestern Bell has explicitly acknowledged that paging carriers should continue having such arrangements as usual, *precisely because* they are exempt from wireless LNP obligations.

3. The bare definition of interconnection, upon which Verizon primarily relies to defeat this Commission's jurisdiction, is only the *beginning* of the pertinent legal analysis – not the end of it. Section 201(a) of the Act confers Commission jurisdiction *not only* to order Verizon "to establish physical connections with other carriers," *i.e.*, Coalition members and other CMRS providers, *but also* to order Verizon "to establish through routes . . . and to establish and provide . . . regulations for operating such through routes". (Emphasis added). Further, Section 201(b) empowers the Commission to declare any Verizon "practice, classification, or regulation" concerning such through route to be "unjust or unreasonable" and, hence, "unlawful".

The "through routes" in this case are the routes of calls from Verizon's originating end offices serving the calling parties to the premises of Coalition members, where the calls are physically delivered for transmission over the paging networks. Thus, by the express language of Section 201(a), the Commission is empowered to order Verizon to establish such "regulations for operating such through routes" as may be necessary to maintain Type 3A interconnection service. Similarly, Verizon's "practice" of denying Type 3A interconnection is "unjust" and "unreasonable" both because it effectively denies Coalition members their statutory right to interconnection their networks with Verizon's facilities "at any technically feasible point," and because of the adverse impact that it has on number utilization. Regardless of the label Verizon seeks to attach to its actions, the features of Type 3A interconnection are an inherent part of the "practices" and "regulations" affecting the "through routes" resulting from the "physical connections" of facilities under Section 201 of the Act, and therefore are squarely within the Commission's jurisdiction and authority.

4. Finally, Verizon falsely represents that the *TSR* decision held that "LECs are not obligated under our rules to provide [Type 3A and similar] services at all." What *TSR* actually *held*, in relevant part, was that Section 51.703(b) of the rules (prohibiting ILECs from assessing

charges on other carriers for local traffic originating on the ILEC's network) "does not compel a LEC to offer wide area calling or similar services *without charge*". What Verizon cites as a holding of *TSR* actually is no more than *dictum* which is not and should not be controlling here, and *dictum* which Verizon in any event has twisted beyond recognition. Unquestionably, the *dictum* in *TSR* has misled state commissions while in the performance of their Section 252 arbitration duties, as well as courts reviewing arbitration decisions. Therefore, the Commission should take advantage of this opportunity to clarify its position on the legal status Type 3A interconnection and similar arrangements once and for all.

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**REPLY TO COMMENTS ON
PETITION FOR DECLARATORY RULING**

THE PAGING COALITION,¹ by its attorney and pursuant to Public Notice DA 01-2942 released on December 19, 2001, respectfully submits its reply to the comments filed in the captioned proceeding on January 18, 2002, concerning the Coalition's Petition for Declaratory Ruling (the "Petition"). As its reply to the comments, the Paging Coalition respectfully states:

Background

The Petition was filed in response to letters issued by Verizon in late September and early October 2001 announcing that it would terminate all "Type 3A" interconnection arrangements²

¹ When the Petition for Declaratory Ruling was filed on November 30, 2001, the Paging Coalition initially consisted of Central Vermont Communications, Inc., Datapage, Inc., NEP, LLC d/b/a Northeast Paging and Karl A. Rinker d/b/a Rinker's Communications. Subsequently, on January 14, 2002, the Coalition filed a supplement to its petition notifying the Commission and interested parties that A. V. Luttamus Communications, Inc., Mobile Communication Service, Inc., RAM Technologies, Inc., Schuylkill Mobile Fone, Inc., Telepage Communication Systems, Inc. and T&T Communications, Inc. d/b/a West Virginia Paging had become members of the coalition and joined as petitioners herein. As now constituted, the Paging Coalition serves approximately 165,000 customers who will be directly and adversely affected by Verizon's decision to terminate Type 3A interconnection.

² As explained in more detail in the Petition, Type 3A interconnection permits the public to page customers of the Coalition with a local (seven digit) call anywhere in a LATA served by a Coalition member.

in November 2002, ostensibly due to wireless Local Number Portability (“LNP”). Pointing out, among other important considerations, the onerous and costly disruption and hardship to themselves and their subscribers arising from such termination, the Paging Coalition requested the Commission to find and declare that Verizon’s termination of Type 3A interconnection is unjust and unreasonable within the meaning of Section 201 of the Communications Act, 47 U.S.C. §201, and therefore unlawful, and that such unilateral termination additionally violates Section 20.11 and Section 51.315(b) of the Commission’s rules, 47 C.F.R. §§20.11, 51.315(b).

Comments in support of the petition were filed by Arch Wireless, Inc.; jointly by Bobier Electronics, Inc., Business Service Center, Inc., Conestoga Mobile Systems, Inc., Com-Nav, Inc., Redi-Call Communications Company and Salisbury Mobile Telephone, Inc.; by JSM Telepage, Inc.; by Southern Ohio Communication Services, Inc.; by Small Business in Telecommunications; and by Virginia Cellular LLC, none of whom is a member of the Coalition. These comments confirm the substantial hardship and fundamental impropriety of Verizon’s termination of Type 3A interconnection as described in the Petition.

Comments opposing the petition were filed by Sprint Corporation and Verizon. However, as the Paging Coalition demonstrates below, their opposition comments are riddled with egregious errors of fact and material misstatements of the law, which fatally undermine the conclusions they urge upon the Commission. Accordingly, the Paging Coalition respectfully submits that the opposition comments are without merit and should be entirely rejected, and that the relief requested by the Paging Coalition should be granted in full.

Argument in Reply

1. Contrary to Verizon's Claims, Termination of Type 3A Interconnection Will Require Coalition Members to Reconfigure Their Networks at Great Hardship and Expense To Themselves and Their Customers

Perhaps Verizon's most egregiously wrong-headed spin of the "facts" is contained in the following passage from its comments:

"In hopes of convincing the Commission to intervene, the Petitioners suggest that terrible things will happen if Verizon withdraws [Type 3A interconnection]. *This is non-sense.*

"Petitioners claim that they will have to reconfigure their existing paging networks . . . causing 'great disruption and financial harm' to themselves and their 'thousands of existing customers.'* *No rearrangement is required, as the existing interconnection arrangements will not change.*"³

The only "nonsense" is Verizon's position. The incontestable fact is that if Verizon is allowed to terminate Type 3A interconnection, *all* calls to the Coalition's pagers that originate from outside the local calling area in which their Type 3A serving central office is located will immediately become *toll calls* to the calling parties, notwithstanding that all such calls previously were made with *no usage charge* to the calling party. In fact, for other purposes Verizon has estimated that *80 percent* of all Type 3A calls originate from outside of the local calling area in which the Type 3A serving central office is located.⁴ In other words, according to Verizon's study, approximately *80 percent* of the Coalition's customers would immediately have to start paying a toll charge for *every* call made to their pagers.

The customers so affected include the police and fire departments, other emergency or public safety personnel throughout New England, Pennsylvania, Kentucky and West Virginia, as well as doctors, major hospitals and other critical medical services throughout these areas that comprise substantial portions of the Coalition's customer base. Converting calls from these cus-

³ Opposition of Verizon at p. 8. (Emphasis added). (*Footnote omitted).

⁴ See Petition at p. 4 & n. 3.

tomers to tolls calls would be *absolute budget busters* for these agencies and would be a totally unacceptable outcome. Therefore, simply as a customer service imperative, members of the Coalition would be forced to rearrange their existing networks at great cost and disruption to themselves, so that they can offer new local telephone numbers to as many of their customers as is economically feasible to do. Thus, Verizon simply blinks reality and is attempting to mislead the Commission when it pretends that “no rearrangement [of Coalition member paging networks] will be required”.

Furthermore, it will not be economically feasible for Coalition members to establish new interconnection facilities in *each* of Verizon’s local calling areas presently served by existing Type 3A interconnections. Thus, customers in those areas left without local calling access will be forced to pay toll charges when placing a page, contrary to the local calls they can place today. They will therefore have to either pay the tolls or, alternatively, drop the paging service altogether as no longer cost effective. Such an adverse change in the convenience and cost of service to the users does indeed “degrade” the Coalition members’ service offerings by any definition of the term; and Verizon again is simply misleading the Commission when it tries to deny this fundamental fact.⁵

Moreover, contrary to Verizon’s protestations, the direct and inescapable consequence of reconfiguring their networks to offer new local telephone numbers for their paging units is that the Coalition members and their customers must endure the agony and expense of changing the numbers assigned to the affected pagers – *i.e.*, changing the numbers for the substantial portion of the 165,000 affected customers. This process is identical in all material respects to the split of an area code for the affected parties. As Verizon well knows, the costs and hardships associated

⁵ Verizon Comments at p. 5 (“Petitioners’ claim that they will be left with ‘a degraded service offering to the public’* is just not true.” (*Footnote omitted). What actually “is just not true” is Verizon’s spin.

with such an exercise are real and palpable; they most assuredly are not a “[f]antasy” as Verizon scoffs in its comments.⁶

2. Neither Wireless Local Number Portability Nor Local Competition Justifies Verizon’s Termination of Type 3A Interconnection

Verizon reiterates its mantra that “[n]umber portability makes [Type 3A interconnection] unworkable”,⁷ but it never once acknowledges that all paging carriers are entirely exempted from any wireless Local Number Portability (LNP) obligation.⁸ Thus, even if Verizon’s description of the difficulties caused by LNP were accurate (which it is *not*, see *infra*), such alleged difficulties would not justify its decision to terminate Type 3A interconnection to members of the Coalition.

In this regard, Arch correctly notes that “other LECs are continuing to offer Type 3A interconnection despite the impending CMRS LNP deadline.”⁹ In fact, it has come to the Paging Coalition’s attention that Southwestern Bell recently clarified that it would continue to provide this type of interconnection (which it calls the “Area Wide Calling Plan”) to paging carriers *pre-*

⁶ Verizon Comments at p. 8. Verizon also selectively notes that “Petitioners complain that they will have to obtain ‘a decision from each customer as to which of the available wireline local calling areas they desired’”. Verizon Comments at p. 9 & n. 22. It then conveniently goes on to miss the relevant point by concluding, patronizingly, that “This, of course, is exactly what the rest of the wireless industry routinely does today.” *Id.* Verizon evidently fails to comprehend the elementary fact that there is a vast difference between, on the one hand, educating new customers about their choices on a going forward basis when they commence their service, which *all* telecommunications carriers must do, and, on the other hand, forcibly *retrofitting* the existing Type 3A base of 165,000 customers with new local numbers, which Coalition members and other paging carriers must do *solely* because Verizon decided to terminate Type 3A interconnection arrangements.

⁷ Verizon Comments at p. 4.

⁸ See Petition at Section 2, pp. 9-10. Verizon does state at one point that it “is currently exploring whether there are ways in which it might be able to continue [Type 3A interconnection] for paging carriers. At a minimum, paging carriers using these arrangements would have to agree not to offer number portability to their customers and not to port these numbers from Verizon to another LEC.” Verizon Comments at p. 2. If in fact this is true Verizon is keeping it a big secret from interested parties, because Verizon’s employees, when asked, have continued to insist to Coalition members that the termination of Type 3A interconnection is a *fait accompli* as of November 2002. If Verizon’s statement is serious, the Coalition would remind Verizon that it has a long-standing obligation to negotiate with interested parties in good faith and not to simply announce another misbegotten *ipse dixit*. See, e.g., *In the Matter of the Need to Promote Competition and the Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2913 (FCC 1987).

⁹ Comments of Arch Wireless, Inc. at p. 5.

cisely because paging carriers “were not covered by the FCC’s local number portability requirement.”¹⁰ As a result, Southwestern Bell has clarified that “paging . . . carriers may continue to do business as usual under the [Area Wide Calling Plan]”. *Id.* In short, Southwestern Bell has explicitly acknowledged the rather self-evident fact that Verizon continues to ignore in its comments, *viz.*, that the exemption of paging carriers from wireless LNP eliminates any plausible justification for terminating Type 3A interconnection.

Verizon also is wrong when it claims that “local competition itself would eventually have killed [Type 3A interconnection], even without the special problems caused by number portability.”¹¹ Verizon goes on to assert that the toll-free calling provided by Type 3A interconnection “do[es] not cause calls from customers of CLECs and other independent LECs to be [toll free to the caller]” and that “[a]s local competition grows, the volume of these calls increases, and [Type 3A interconnection] become[s] less and less useful.” *Id.* In fact, Verizon even makes the preposterous claim that Type 3A interconnection “has already reached the point of *diminished utility* in much of the New England area in which Petitioners operate as, for example, CLECs now provide more than 20 percent of the access lines in Verizon territory in Massachusetts.” *Id.* (Emphasis added).

While Verizon’s initial premise may be true as far as it goes, *viz.*, that the Type 3A interconnection offered by it does not, *ipso facto*, result in toll-free calling for calls placed from independent ILEC exchanges or from CLEC customers. However, it is a total *non-sequitur* to argue, as Verizon does, that Type 3A interconnection “become[s] less and less useful” as the volume of such calls increases. In point of fact, what Coalition members and other paging carriers do “as

¹⁰ Letter dated November 13, 2001 from Southwestern Bell Telephone Company to Advanced Paging, Inc., McAllen, TX, a copy of which is attached hereto as Exhibit A.

¹¹ Verizon Comments at pp. 4-5.

the volume of [independent ILEC and CLEC] calls increase” is simply to enter into agreements with those ILECs and CLECs specifically governing the handling of calls originating on their networks. Those calls may in some cases be handled by direct interconnections with the ILEC or CLEC, or they may continue as “transit” traffic on Verizon’s network. In either case, it simply is not true, as claimed by Verizon, that the value or utility of Type 3A interconnection diminishes as the volume of independent ILEC and CLEC calls to pagers increases.¹²

It also is utterly absurd and typically arrogant for Verizon to claim that Type 3A interconnection “has already reached the point of diminished utility in much of the New England area in which Petitioners operate”. *Id.* As an initial matter, Verizon’s anecdotal reference to Massachusetts, even if accurate, does not speak at all to the experience in states like Kentucky, Maine, New Hampshire, western Pennsylvania, West Virginia and Vermont, where a substantial portion of the Coalition members have their operations. Moreover, and perhaps more importantly, whether or not Type 3A interconnection retains its utility is best judged by the *Coalition members* and other *paging carriers* -- since it *their* services which need and rely upon it – rather than by Verizon. And the Coalition is here to tell the Commission in this proceeding that Type 3A interconnection *continues to be vitally needed notwithstanding the rise of independent ILEC and CLEC traffic*.

Similarly arrogant and equally wrong is Verizon’s assertion that “the same 800 services that everybody else uses . . . are actually *better than* Verizon’s [Type 3A interconnection]”.¹³ If Verizon were correct, which it is *not*, the Coalition members and other paging carriers would have long since gravitated to those services and abandoned Type 3A interconnection. They have

¹² Verizon’s description of why number portability allegedly makes Type 3A interconnection unworkable likewise is erroneous and may not be accepted a face value. Verizon Comments at p. 4 & n. 5. However, since paging carriers are exempt from LNP obligations, it is not necessary to plumb that subject in this proceeding.

¹³ Verizon Comments at p. 5.

not done so, however, because the fact is that 800 services actually are more cumbersome and costly to use than Type 3A. They are also wasteful of numbering resources, because at least one regular POTS number is associated with each 800 service number, thereby wasting both POTS numbers and 800 service numbers. Indeed, as Arch correctly points out, Type 3A interconnection was originally developed by Verizon's predecessor NYNEX as a *replacement of* and an *intended improvement upon* the use of 800 services for interconnection to paging networks.¹⁴

That Verizon professes to know better than the Coalition members themselves what interconnection arrangements have utility for them lies at the core of Verizon's error in unilaterally terminating Type 3A interconnection. The Commission's long standing policy as articulated in the *CMRS Second Report and Order*¹⁵ and in Section 20.11 of the Commission's rules, 47 C.F.R. §20.11, holds that it is the *Coalition members* and other CMRS providers that are entitled to decide which interconnection arrangements are useful to them! Contrary to Verizon's position, it is *not* entitled to decide which arrangements Coalition members may have and dictate which ones they may not have!

3. Type 3A Interconnection and Similar Arrangements Are Clearly Subject to the Commission's Section 201 and 251 Interconnection Jurisdiction

Primarily relying upon *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (FCC 2000), *aff'd on other grounds sub nom. Qwest Corporation v. FCC*, 272 F.3d 462 (DC Cir. 2001) ("*TSR*"), Verizon dismisses Type 3A interconnection and similar arrangements as merely billing services which are not subject to the Commission's jurisdiction over interconnection arrangements.¹⁶ Sprint similarly dismisses them as "merely a discounted toll bill-

¹⁴ Comments of Arch Wireless, Inc. at p. 2.

¹⁵ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order)*, 9 FCC Rcd 1411, 1497-1498 (FCC 1994).

¹⁶ Verizon Comments at pp. 5-7.

ing offering, not a form of interconnection.”¹⁷ These contentions are wrong because, as shown *infra*, they egregiously misapply *TSR*, because they ignore the plain command of Section 51.315(b) of the rules, and because they are plainly inconsistent with the explicit provisions of Sections 201 and 251 of the Communications Act, 47 U.S.C. §§201, 251.

As a preliminary matter, the Coalition points out that the Commission in *TSR* actually characterized Type 3A and similar arrangements in relevant part as “a service in which . . . the interconnector pays the LEC a per-minute fee to recover the LEC’s toll carriage *costs*”. 15 FCC Rcd at 11167 & n. 6. (Emphasis added). The Commission did *not* decide that they were merely “billing services” or a “discounted toll billing offering,” as suggested by Verizon and Sprint. To the contrary, the Commission’s characterization in *TSR* is entirely consistent with and supportive of the Coalition’s own description of the arrangement in Figure 2 of its Petition, and accompanying text in Section 4 of the Petition.¹⁸ Verizon did not address at all Section 4 of the Petition, in which the Coalition demonstrates that Section 51.315(b) of the rules prohibits Verizon from terminating Type 3A interconnection because doing so constitutes the forcible separation of currently combined network elements that are now offered to Coalition members on an unbundled basis.

Moreover, Section 332(c)(1)(B) of the Act explicitly authorizes the Commission to “order a common carrier [*i.e.*, Verizon] to establish physical connections with [Coalition members and other CMRS providers] *pursuant to Section 201 of this Act*.” (Emphasis added). In turn,

¹⁷ Sprint Comments at p. 3.

¹⁸ The Commission stated in *TSR* that with Type 3A and similar arrangements the paging carrier “pays the LEC a [single] per-minute fee to recover the LEC’s toll carriage costs”. The single, per-minute fee for this combined functionality is what makes it “unbundled” for purposes of Section 51.315(b). *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 394-395 (1999). In turn, the network elements currently already “combined” in this unbundled offering include shared transport, local tandem switching (as necessary), local circuit switching and dedicated transport; and Section 51.315(b) explicitly prohibits Verizon from separating those network elements over the objections of Coalition members and other paging carriers. *See* Petition at pp. 13-18.

under Section 201(a) the Commission *not only* has jurisdiction to order Verizon “to establish physical connections with other carriers,” *i.e.*, Coalition members and other CMRS providers, *but also* to order Verizon “to establish through routes . . . and to establish and provide . . . *regulations for operating such through routes*”. (Emphasis added). Further, Section 201(b) explicitly empowers the Commission to declare any Verizon “practice, classification, or regulation” concerning such through route to be “unjust or unreasonable” and, hence, “unlawful”.

The “through routes” in this case are the routes of calls from Verizon’s originating end offices serving the calling parties to the premises of Coalition members, where the calls are physically delivered for transmission over the paging networks.¹⁹ Thus, by the express language of Section 201(a), the Commission is empowered to order Verizon to establish such “regulations for operating such through routes” as may be necessary to maintain Type 3A interconnection service.²⁰

Similarly, a “practice” or “regulation” which Verizon now seeks to establish with respect to traffic interchanged between it and Coalition members -- *viz.*, a “practice” or “regulation” Verizon would establish by terminating Type 3A interconnection – has the effect of requiring all traffic over the “through route” to be handled *exclusively* as sent-paid telephone toll traffic of the calling party.²¹ Upon a finding by the Commission that such “practice” or “regulation” is “unjust” or “unreasonable,” as the Coalition requests, Section 201(b) explicitly declares such “practice” and “regulation” to be “unlawful.”

¹⁹ See Figure 2 at p. 16 of the Petition. For convenient reference the figure is attached hereinafter as Exhibit B.

²⁰ Exhibit 1 to the Petition is an example of the “regulations” necessary to maintain Type 3A interconnection service which the Commission may order Verizon to establish pursuant to Section 201(a) of the Act.

²¹ By contrast, under a Type 3A arrangement which Verizon seeks to eliminate, Coalition members are permitted to establish “virtual” Points Of Interconnection (POIs) in each of Verizon’s end offices by means of common transport and other combined network elements, which arrangement enables that end office to treat calls to Type 3A numbers as local calls in that central office. See Exhibit B. “Virtual” POIs exist when a called number is rated from one local calling area but physically delivered by the ILEC to another. They are common in LEC/CMRS interconnections.

There can be no serious doubt that a Verizon “practice” of denying Coalition members Type 3A interconnection, thereby denying them “virtual” POIs in each of Verizon’s end offices, is “unjust” and “unreasonable” for purposes of Section 201 of the Act. This is so because Section 251(c)(2)(B) of the Act expressly guarantees Coalition members the right to interconnect with Verizon “at any technically feasible point” within Verizon’s network. With a Type 3A interconnection, Coalition members establish “virtual” POIs in each of Verizon’s end offices in a LATA using common transport and other combined network elements, thereby enabling calls to Coalition pagers to be treated as local calls to the calling party, notwithstanding that the call is physically delivered to a different ILEC local calling area.

By terminating Type 3A interconnection, Verizon is using its monopoly power to deny Coalition members the right to interconnect at Verizon’s end offices *other than* its Type 3A serving office, and is thereby requiring that all calls originating at those other offices to be treated exclusively as sent-paid toll calls by the calling party. Verizon’s “practice” of doing so violates both the letter and spirit of Section 251(c)(2)(B) of the Act, governing interconnection of networks “at any technically feasible point,” and therefore should be declared “unjust” and “unreasonable” under Section 201.

Therefore, it is entirely irrelevant in any event to the Commission’s jurisdiction under Sections 332 and 201 whether Verizon is right that Type 3A interconnection is merely a “billing service” and not “interconnection”. The fact remains that Verizon seeks to condition the physical connection of its facilities upon Coalition members and other paging carriers acceding to Verizon’s demand that the interchanged traffic be treated exclusively as sent paid toll traffic of the calling party. Stated another way, Verizon would establish the “practice” that only sent-paid toll calls may be transmitted on the “through route” between Verizon’s originating end offices

and Coalition members. That “condition” or “practice” alone – regardless of the label Verizon seeks to attach to the end result -- is sufficient by itself to invoke the Commission’s jurisdiction under Sections 332(c) and 201.²²

Moreover, exactly the same conclusion is reached even under the new interconnection sections added by the Telecommunications Act of 1996. Verizon correctly observes that the Commission has defined the term “interconnection” for purposes of Section 251 as “the linking of two networks for the mutual exchange of traffic.” However, that definition by itself does not define either the scope of Verizon’s legal obligations concerning “interconnection” under Section 251, nor does it define the scope of the Commission’s jurisdiction concerning “interconnection” under Section 251. Instead, Section 251(c)(2) imposes upon Verizon, as an ILEC, not only the bare “duty to provide . . . interconnection,” but also the duty to “provide . . . interconnection . . . on rates, terms, and conditions that are just [and] reasonable”. (Emphasis added).

What Verizon seeks to do by terminating Type 3A interconnection is to “condition” its physical linking of networks upon the Coalition members acceding to Verizon’s demand that all interchanged traffic be treated exclusively as sent-paid toll traffic of the originating caller. Alternatively, its actions can be described as seeking to unilaterally impose as a necessary condition of the physical linking of networks the “term” that calls to pagers must be exchanged solely as sent-paid toll calls of the originating caller. Either way, Verizon’s actions are an inextricable component, *i.e.*, a material “term” and “condition” of its offer to paging carriers to “physical[ly] link[] networks”; and hence they fall squarely within the Commission’s supervisory jurisdiction

²² In this regard, Arch correctly argues at pp. 5-7 of its comments that the adverse effect on number utilization resulting from termination of Type 3A interconnection by itself is sufficient for the Commission to find that Verizon’s “practice” of terminating, or failing to offer, Type 3A interconnection is “unjust” and “unreasonable” within the meaning of Section 201 of the Act and, hence, is “unlawful”. The Coalition presumes that Verizon does not dispute the Commission’s plenary jurisdiction over number utilization issues, especially in light of the powers conferred by Section 251(e) of the Act, 47 U.S.C. §251(e). This again illustrates the speciousness of Verizon’s use of labels to attempt to avoid this Commission’s jurisdiction to grant the relief requested in the Petition.

to determine whether or not such “terms” and “conditions” of interconnection are “just” and “reasonable” within the meaning of Section 251(c)(2) of the Act.²³

This conclusion is reinforced by the fact that interconnection agreements between CMRS carriers and ILECs historically have included “terms” and “conditions” establishing the principles by which end user calling parties are to be billed by the interconnecting carriers for the interchanged traffic.²⁴ It is of course true that the particular rating and billing “terms” and “conditions” in a Type 3A interconnection necessarily are *different* than the particular “terms” and “conditions” in a Type 1 or Type 3B interconnection. But there can be no serious argument that *both* arrangements characteristically include *some form* of terms and conditions relating to the manner in which interchanged traffic will be rated and billed to the end users. Those “terms” and “conditions” are explicitly required by Section 251(c)(2) of the Act, as well as by Section 201, to be “just” and “reasonable” regardless of whether they govern a “billing option” or something more than that.

This conclusion is similarly reinforced by the fact that Verizon itself has historically acknowledged that Type 3A is not only “interconnection,” but also is a “type” of interconnection so as to invoke the explicit protection of Section 20.11 of the rules. The Appendix attached as Exhibit 1 to the Petition is replete with acknowledgements that “Type 3A” is both “interconnection service” and a discrete “Type of Interconnection Provided by [Verizon’s predecessor NET]”.²⁵ Arch also appended to its comments a letter from Verizon’s predecessor NYNEX ex-

²³ Although the Commission’s interconnection jurisdiction under Section 251 of the Act would support the relief requested by the Coalition in its Petition, the Coalition has specifically invoked the Commission’s jurisdiction under Sections 332(c) and 201, as well as Sections 20.11 and 315(b) of the rules.

²⁴ See, e.g., *Domestic Public Land Mobile Radio Service*, 63 FCC 2d 87, 99-100 (FCC 1977)(Section 6 of model Connection and Traffic Interchange Agreement entitled “Charges, Billing and Payments for Interchanged Calls”); *Memorandum of Understanding*, 80 FCC 2d 352, 366-367 (FCC 1980)(Section 6 of model Connection and Traffic Interchange Agreement entitled “Charges, Billing and Payments for Interchanged Calls”).

²⁵ See, e.g., *Sections 4, 4.2, 4.3* (Exhibit 1 at pp. 22-24).

pressly acknowledging that the “switched interconnection facilities NYNEX offers to paging companies are Type 3A and 3B Services in New England”.²⁶ A similar letter was received by at least one member of the Coalition and a copy is attached for convenient reference as Exhibit C.

Moreover, attached hereto as Exhibit D is an excerpt from the RCC Handbook published by NYNEX initially in November 1991, which, similarly to current definitions, states that interconnection “is the physical means by which the . . . paging service is connected to the local exchange network.” Nonetheless, the Handbook goes on to explicitly list “Type 3A Interconnection Service” as discrete “type of service” which “[p]rovides a trunk-side termination to provide LATA-wide, one-way incoming signaling (DID) only”. *Id.* Therefore, even if the statutory language were not clear and decisive (which it is), the numerous acknowledgments over the years by Verizon’s predecessor companies would be persuasive by themselves to compel the conclusion that Type 3A is both “interconnection” under both Sections 201 and 251 of the Act, as well as a discrete “type” of interconnection within the meaning of Section 20.11 of the rules.

4. Contrary to Verizon’s Argument, The *TSR* Decision Does Not Derogate From the Relief Requested Herein

Finally, Verizon makes the astonishing (and palpably false) claim – twice, in fact – that “Petitioners *do not even refer to* [the *TSR* decision], let alone attempt to explain why the Commission was wrong then or should change its mind now.”²⁷ Of course, the truth is that the Coalition did *both* in Section 5 at pp. 18-19 of its Petition.

²⁶ Comments of Arch Wireless, Inc., Attachment A at p. A-1.

²⁷ Verizon Comments at p. 1. (Emphasis added). See also Verizon Comments at p. 7 (“The Petitioners *do not try to distinguish TSR Wireless*. In fact, *they do not even mention it* in their Petition). (Emphasis partially added).

Equally if not more important, Verizon falsely claims that “the Commission *held* [in *TSR*] that ‘LECs are not obligated under our rules to provide [Type 3A and similar] services at all.’”²⁸ The *TSR* decision in fact *held* no such thing. What it *held*, in relevant part, was that Section 51.703(b) of the rules (prohibiting ILECs from assessing charges on other carriers for local traffic originating on the ILEC’s network) “does not compel a LEC to offer wide area calling or similar services *without charge*”. 15 FCC Rcd at 11184. (Emphasis added).

The Commission was not asked in *TSR*, and did not purport to decide, the issue raised by the Petition herein, *viz.*, whether or not it is unlawful pursuant to Sections 332(c) and 201 of the Act (or even under Section 251), and Sections 20.11 and 51.315(b) of the Commission’s rules, for Verizon to terminate existing Type 3A interconnection arrangements. Instead, what the Commission *held* in *TSR* is that Section 51.703(b) of the rules does not require Verizon to provide Type 3A interconnection “*without charge*” and that “nothing in the Commission’s rules prohibits a LEC from charging the paging carrier for those [Type 3A] services.” *Id.*

The statement cited by Verizon as a holding of *TSR* actually was no more than *dictum* – not a holding of the case.²⁹ Thus, even if the Commission meant by its *dictum* what Verizon claims the Commission meant, it is not precluded by its *TSR* analysis from granting the relief requested by the Coalition. Furthermore, the Coalition respectfully submits that Verizon has improperly twisted the Commission’s *dictum* beyond all recognition. The Commission thus should

²⁸ Verizon Comments at p. 1. (Emphasis added). *See also* Verizon Comments at pp. 6-7 (The Commission . . . *squarely held* [in *TSR*] ‘Indeed, LECs are not obligated under our rules to provide such services at all.’” (Emphasis added)).

²⁹ After the Commission held that ILECs are not required by Section 51.703(b) of the rules to provide Type 3A and similar interconnection arrangements “without charge,” the Commission gratuitously continued: “Indeed, LECs are not obligated under our rules to provide [Type 3A and similar] services at all; accordingly, it would seem incongruous for LECs who choose to offer these services not to be able to charge for them.” Verizon erroneously cites the first part of this statement as a holding of the case.

take advantage of this opportunity to clarify its position on Type 3A and similar arrangements once and for all.

When the Commission referred to “our rules” in the cited *dictum* in *TSR*, the Coalition believes the Commission was referring only to “our [Part 51] rules”. This is so because the case dealt solely with the interpretation and application of the Part 51 rules (specifically Section 51.703(b) in the referenced portion), and the Commission neither cited nor attempted to distinguish the facially contrary implication of a different part of the rules, *viz.*, Part 20 and specifically Section 20.11. Therefore, understood as meaning that “LECs are not obligated under our [Part 51] rules to provide [Type 3A and similar] services,” the statement is true as far as it goes. However, so understood it does *not* mean, and the Commission was *not* called upon to decide in any event, the fundamental issue here pertinent, *viz.*, whether *other* rules or general statutory provisions of the Communications Act mandate that Verizon and other ILECs must do so under circumstances such as here presented.

Similarly, what the Commission actually said was that “‘wide area calling’ services are not necessary for interconnection”. It did *not* say, as Verizon portrays it, that therefore wide area calling services are not a part of interconnection *at all*. It is obviously true, for what it is worth, that having a “wide area calling” or Type 3A arrangement is not a necessary part of *all* interconnection arrangements, because there are many interconnections that exist without “wide area calling” or Type 3A features. For that reason, the Commission was correct in concluding in *TSR*, in substance, that there are some aspects of interconnection arrangements to which Section 51.703(b) simply does not apply. However, it does not follow from this modest premise that Type 3A and similar wide area calling arrangements are not *any* part of interconnection. But that is precisely the illogical conclusion Verizon urges the Commission to adopt. For the reasons stated above and in the Petition, the Commission should not do so.

The *dictum* in *TSR* obviously has confused state commissions in the performance of their Section 252 arbitration responsibilities under the Act; and for this reason as well the Commission should take advantage of this opportunity to clarify its position. As Verizon notes, both the Wisconsin and the Maine Commissions have relied upon the *TSR dictum* to refuse Section 252 jurisdiction over Type 3A and similar arrangements when those issues were raised in arbitration proceedings under the Act.³⁰

What Verizon failed to note, however, is that the Michigan Public Service Commission found that Type 3A and similar arrangements *are indeed* within the scope of ILECs' federal Section 251(c)(2) interconnection duties, as well as under similar duties imposed under state law; and it therefore ordered Ameritech to continue providing such arrangements to cellular carriers in Michigan.³¹ The District Court for the Eastern District of Michigan (per Judge Zatkoff) reversed the PSC's determination of the scope of its arbitration jurisdiction over interconnection under Sections 251 and 252 of the Communications Act, primarily relying upon a flawed interpretation of the Commission's *TSR dictum*.³² Rather ironically, the Michigan Court of Appeals *affirmed* the PSC's decision under state law provisions on interconnection.³³

Guidance on the core question presented in the Petition thus is sorely needed by both the state commissions considering arbitration petitions under Section 252 of the Act and by the fed-

³⁰ Verizon Comments at p. 8.

³¹ *CenturyTel Wireless, Inc. and Thumb Cellular, Petition for Arbitration of Interconnection Agreements with Ameritech Michigan*, Case No. U-11989 (MIPSC 1999), a copy of which is published on the internet at <http://cis.state.mi.us/mpsc/orders/comm/1999/u-11989.pdf>.

³² *Michigan Bell Telephone Company d/b/a Ameritech Michigan v. CenturyTel Wireless, Inc. and Thumb Cellular, et al.*, Case No. 00-CV-70717-DT (Slip Op. at pp. 21-25, January 3, 2001), appeal pending. Judge Zatkoff viewed the *TSR* decision as creating a "split of authority between the FCC and the [Michigan] Commission on how each defines interconnection". (Slip Op. at p. 21). Unsurprisingly, he deferred to what he deemed to be this Commission's view as expressed in the *TSR* decision and reversed the Michigan Commission decision on this point.

³³ *Michigan Bell Telephone Company d/b/a Ameritech Michigan v. Michigan Public Service Commission, et al.*, Nos. 222785 (lead) (Unpublished Opinion November 30, 2001).

eral courts reviewing those arbitration decisions. Accordingly, the Commission should take advantage of this opportunity to rule definitively that Type 3A and similar wide area calling arrangements are part of ILECs' "practices" and "regulations" governing the physical connection of networks and resulting through routes, within the meaning of Section 201 of the Act; that, similarly, such arrangements are "terms" and "conditions" of the physical linking of networks within the meaning of Section 251(c)(2)(D) of the Act; and, lastly, that nothing in its decision in the *TSR* case should be construed to the contrary.

Conclusion

Verizon pontificates, perhaps with tongue in cheek, that "giving [consumers] opportunities to choose from different options is what the Telecommunications Act was all about."³⁴ It does so, hypocritically of course, while attempting to defend its unilateral *elimination* of the choices for consumers which Type 3A interconnection makes possible. That is, Verizon purports to preach the gospel that local competition and other benefits of the Telecommunications Act of 1996 are supposed to afford consumers wider choices, better services and lower rates. But its *practice* -- by eliminating Type 3A interconnection -- is to continue using its remaining monopoly power to *deny* choices to consumers, *degrade* their services and *increase* the cost of such services.

Verizon's actions make a mockery of the Telecommunications Act; and they are a profound perversion of this Commission's long-standing public policies favoring competition, diversity and consumer choice. The Commission should so recognize and forthrightly so label Verizon's conduct. Further, as requested by the Paging Coalition, the Commission should find and declare that Verizon's termination of Type 3A interconnection service is unjust and unreasonable within the meaning of Section 201 of the Communications Act, 47 U.S.C. §201, and

³⁴ Verizon Comments at p. 9.

therefore unlawful; and that such unilateral termination additionally violates Section 20.11 and Section 51.315(b) of the Commission's rules, 47 C.F.R. §§20.11, 51.315(b).

Respectfully submitted,

s/ Kenneth E. Hardman

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Facsimile: (202) 833-2416

Attorney for the Paging Coalition

February 4, 2002

EXHIBIT A

November 13, 2001

Advanced Paging
600 Ash Avenue
McAllen, TX 78501

Dear Customer,

On August 13, 2001, SWBT sent an Accessible Letter concerning the Federal Communications Commission's (FCC's) wireless local number portability rule and its impact on Southwestern Bell's (SWBT's) optional billing program known as the Area Wide Calling Plan (AWCP). Wireless Number Portability will be required for certain CMRS providers beginning November 2002.

However, paging and messaging service providers were not covered by the FCC's local number portability requirement. These carriers may continue to do business as usual under the AWCP tariff.

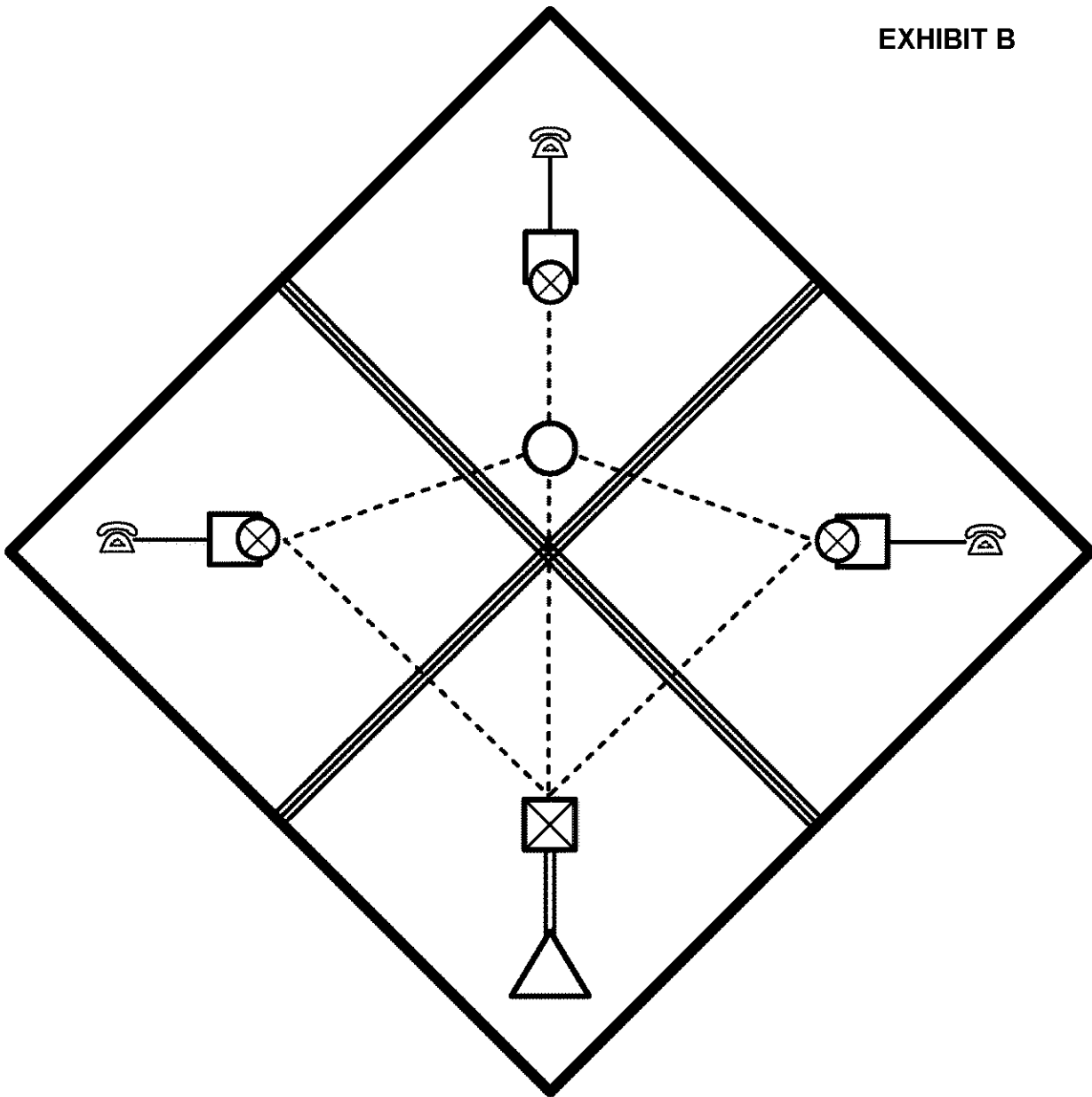
As described in our August 13th Accessible Letter, the AWCP billing option is based on complete NPA/NXX blocks of numbers, and thus is not compatible with number portability. Therefore, SWBT has proposed a change to the AWCP tariff to clarify that to maintain eligibility, carriers participating in the AWCP must not voluntarily port numbers. In addition, under the proposal, if a number is ported to a participating AWCP carrier, the participating carrier acknowledges this number will not be part of the AWCP.

The proposed tariff change will not impact carriers who do not port numbers. If you have questions concerning the proposed tariff change, please call 213-339-5412.

Sincerely,

Southwestern Bell Telephone Company

EXHIBIT B



LEGEND:

— LATA Boundary

≡ Local Calling Area Boundary

☎ Calling Party

□ Originating End Office

⊗ Point of Interconnection

△ Paging Carrier Premises

---- Shared Transport

== Dedicated Transport

○ Local Tandem Switching

⊗ Local Circuit Switching
and Serving End Office

Figure 2: Network Elements Used In Type 3A Interconnection

NYNEX
222 Bloomingdale Road, White Plains, NY 10605
Tel 800 872 0251 Ext 4796
Tel 914 644 4796
Fax 914 681 0902

EXHIBIT C
Page 1 of 2

John P. Sullivan
Director of Sales, Wireless Interconnection Services

NYNEX

January 27, 1997

Mr. Richard Davol
Northeast Paging
100 Larreebee Road
Westbrook, ME 04092

Dear Mr. Davol:

This letter is directed to our PAGING CARRIER CUSTOMERS to explain how the interconnection and pricing rules adopted by the FCC pursuant to the Telecommunications Act of 1996 (Telecom Act) are being implemented by NYNEX for the Paging Industry.

The FCC's First Report and Order was released on August 8, 1996 with an effective date 30 days after publication of a summary in the Federal Register. As a result, the First Report and Order became effective September 29, 1996. On September 27, 1996 the United States Court of Appeals for the Eighth Circuit stayed the First Report and Order.

On November 1, 1996 the Court issued an Order Lifting Stay In Part, which lifted the stay as to Section 51.703. Section 51.703(b) states that "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." In compliance with that Order, effective November 1, 1996 the monthly recurring charge for facilities associated with interconnection services Type 3B, Type 1, and 800 Service (Grandfathered) were stopped in compliance with the Telecom Act.

The FCC's First Report and Order deals only with service used for interconnection associated with the switched network. This does not include 1MBs, DIDs, T1s or T3s or any other lines which may be used for administrative purposes, nor does it exempt a customer from paying the nonrecurring charge to install facilities.

The switched interconnection facilities NYNEX offers to paging companies are Type 3A and 3B Services in New England and Type 2 Service in New York. Some paging companies in New York have interconnected with Type 1 Service which is considered as a form of switched interconnection when used by paging companies to collect traffic from the NYNEX network.

Type 3A Service is a reverse billing option where the paging company elects to be billed for LEC originated traffic, therefore, the reverse billing arrangement will continue on these accounts. NYNEX will be negotiating a new interconnection rate for this reverse billing option.

To recap, the effective date of the First Report and Order which stopped recurring monthly billing was November 1, 1996 when the Eighth Circuit's Stay was lifted in part. Nonrecurring charges will continue for the installation of facilities.

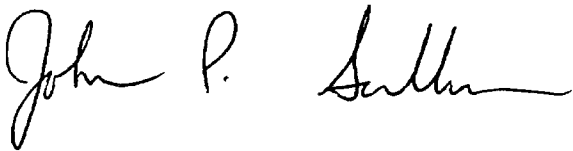
If the billing has not stopped on accounts which you believe should not be billed under the First Report and Order, kindly detail the billing numbers in a letter addressed to:

Ms. Susan Richards
NYNEX Account Management
125 High St., Room 626
Boston, MA 02110

Ms. Richards will initiate a claim on your account and NYNEX will investigate your issues. Please note that all claims must be in writing, and if you have withheld payment for monthly recurring charges prior to the November 1, 1996 effective date, you are responsible for payment through October 31, 1996.

If you have any questions please call me on 914-644-4796, or Susan Richards at 617-342-0323.

Sincerely,

A handwritten signature in cursive script, reading "John P. Sullivan".

210000
617-342-0323
(914) 644-4796

EXHIBIT D

RCC HANDBOOK

SERVICE SPECIFICATIONS

OVERVIEW

Radio Common Carriers (RCCs) and Cellular Mobile Carriers (CMCs) are regulated carriers authorized by the Federal Communications Commission (FCC) to provide radio communications services to the general public. RCC/CMCs are subject to FCC Part 22 Rules and Regulations. Licenses granted by the FCC under Part 22 rules authorize the provision of exchange telecommunication services by radio to the public.

RCC/CMC services include cellular mobile services and one-way signaling (paging) services. These services generally interconnect with the Public Switched Network (PSN) and may be subject to state regulation.

INTERCONNECTION

Interconnection is the physical means by which the cellular network/paging service is connected to the local exchange network. This interconnection provides for two-way conversations between mobile telephones and landline telephone subscribers or one-way connections between landline telephones and radio paging devices.

New England Telephones currently offers the following cellular/paging interconnection services (for more information refer to the table corresponding to each type of service and/or National document TR-NPL-000145):

- | | |
|-----------------------------------|---|
| • Type 1 Interconnection Service | Provides a trunk-side connection from a NET and office to a Point of Interconnection (POI) for two-way calling. |
| • Type 2A Interconnection Service | Provides a four wire, trunk-side connection arranged for two-way calling to NET's access tandem. This service allows Cellular Carriers to provide their mobile subscribers with an Equal Access choice of an Interexchange carrier. |
| • Type 2B Interconnection Service | Provides a trunk-side connection to an NET and office and functions like a high usage trunk. |
| • Type 3A Interconnection Service | Provides a trunk side termination to provide LATA-wide, one-way incoming signaling (DDO) only. The RCC pays usage charges. |
| • Type 3B Interconnection Service | Provides a trunk side termination that operates similarly to DDO service. The calling party pays usage charges with Type 3B service. |

November 1991

The information contained herein is no way constitute a legally binding agreement between New England Telephones and its customers. It is meant solely as a guideline. Please refer to applicable tariffs and/or interconnection agreements.

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